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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/665,656 | 09/18/2003 | Carol Ann Egan | ROC920030111US1 | 8562 |
| 30206 7590 02/18/2009 IBM CORPORATION ROCHESTER IP LAW DEPT. 917 3605 HIGHWAY 52 NORTH ROCHESTER, MN 55901-7829 | | | | |
| EXAMINER | | | | |
| DAO, THUY CHAN | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 2192 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 02/18/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

| | |
|--------------------------------------|------------------------------------|
| Application No. 10/665,656 | Applicant(s) EGAN ET AL. |
| Examiner Thuy Dao | Art Unit 2192 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-34 and 36-54.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Tuan Q. Dam/
Supervisory Patent Examiner, Art Unit 2192

Continuation of 11. does NOT place the application in condition for allowance because:

Claim 1 is the representative claim (Remarks, page 12, first paragraph and page 13, last paragraph).

1) The first claim element at issue: "detecting a predefined triggering event on the computer system indicative of a potential maintenance issue, the predefined triggering event being triggered by a current operating condition of the computer system" (Remarks, page 12, first paragraph and claim 1, lines 3-5).

The examiner respectfully disagrees with Applicants' assertions.

SafePatch explicitly teaches:

"detecting a predefined triggering event on the computer system" (Figure in page 43, steps 1-3, a predefined triggering event such as collecting file/patch attributes at a predefined date and time on a remote computer, page 2, section 1.1.1.2)

"indicative of a potential maintenance issue" (files/patches on the remote computer may not be up-to-date and needs to be compared with latest patch data from the SafePatch server, Figure in page 1 and section 1.1 SafePatch Overview),

"the predefined triggering event being triggered by a current operating condition of the computer system" (SafePatch Agent must be installed and running on the remote computer as a current operation condition to trigger the predefined triggering event above, page 2, section 1.1.1.2 and 1.1.2).

2) The second claim element at issue: "connecting to an upgrade management server, based upon a set of user defined policies residing on the computer system" (Remarks, page 13, last paragraph and claim 1, lines 7-8).

The examiner respectfully disagrees with Applicants' assertions.

SafePatch explicitly teaches:

pages 17-20, selecting/adding remote computers and installing SafePatch Agent (i.e., SafePatch Agent has "user defined policies residing on the computer system");

steps 3-5, Figure in page 43, SafePatch Agent installed and running on the remote computer, collecting file attributes and reporting them to SafePatch server, but not to any upgrade server (i.e., "connecting to an upgrade management server, based upon a set of user defined policies residing on the computer system").

3) Claims 2-29, 31-34 and 36-53 are dependent claims which rely, either directly or indirectly, from independent claims 1 and 30. These claims are also rejected based on virtue of their dependencies on the rejected base claims 1 and 30, respectively.

In conclusion, the examiner respectfully maintains ground of rejection over claims 1-34 and 36-54 in view of SafePatch and Chamberlain.